

Press release

LCQ8: Enforcement of Mandatory Provident Fund Schemes Ordinance

Wednesday, March 10, 2010

Following is a question by the Hon Chan Kin-por and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (March 10):

Question:

Regarding the enforcement of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), will the Government inform this Council whether it knows:

(a) the annual numbers of claims the authorities had filed to the Court to recover contributions to the Mandatory Provident Fund schemes in arrears since 2005 and the number of claims so allowed;

(b) the annual numbers of criminal prosecutions the authorities had instituted against companies (including directors or management staff of the companies concerned) or individuals under the Ordinance since 2005, and among such cases, the respective numbers of companies and individuals convicted, as well as the maximum, minimum and average amounts of fines and/or terms of imprisonment imposed on them; what new plans the authorities have to improve the situation of employers defaulting contribution payments; and

(c) among the criminal prosecutions in (b), the number of companies and individuals who had been prosecuted for more than once under the Ordinance; whether the authorities will consider increasing the penalty imposed under the Ordinance to enhance the deterrent effect; if they will, of the details; if not, the reasons for that?

Reply:

President,

(a) According to the Mandatory Provident Fund Schemes Ordinance (MPFSO),

the Mandatory Provident Fund Schemes Authority (MPFA) would file civil claims to courts to recover default contributions from employers on behalf of employees. The number of claims handled by the court and the number of successful claims since 2005 are set out at Annex 1.

(b) The numbers of criminal prosecutions that the MPFA instituted against employers (including individuals and companies) and directors/managers of companies for failing to enrol an employee in a Mandatory Provident Fund (MPF) scheme or make MPF contributions, the numbers of persons convicted, and the amounts of fines involved since 2005 are set out at Annex 2 (cases are classified under a specific year according to the issue date of summons).

Among the above cases, a non-compliant employer was convicted and ordered to pay a fine of \$258,000 by court in early 2010 in a default contribution case. No convicted person has been sentenced to imprisonment so far.

According to the MPFSO, the MPFA would take enforcement action against employers who failed to enrol an employee in an MPF scheme or make MPF contributions. Since December 1, 2008, the relevant penalties have been increased from the original maximum fine of \$100,000 and imprisonment for 6 months upon the first conviction, and maximum fine of \$200,000 and imprisonment for 12 months on each subsequent conviction, to a maximum fine of \$350,000 and imprisonment for 3 years. For employers who have deducted MPF contributions from employees' wages but failed to remit the contributions, the maximum penalty was increased to a fine of \$450,000 and imprisonment for 4 years.

The MPFA has taken the following measures to address the issue of default contribution by employers:

- (i) develop an electronic trustee reporting system to facilitate the submission of default contribution records of employers by MPF trustees;
- (ii) allocate additional resources and manpower to speed up the processing of default contribution cases and strengthen enforcement actions;
- (iii) set up a special task force to maintain close liaison with the Labour

Department and labour unions to strengthen information gathering and monitor contributions made by non-compliant employers so that appropriate enforcement actions can be taken in a timely manner;

(iv) strengthen publicity and education efforts to encourage employees to report default contributions by employers as soon as possible.

Apart from above-mentioned increase in penalties against non-compliant employers which came into force on December 1, 2008, the Legislative Council also approved the amendments to the MPFSO in 2008 which inter alia empower the court to compel non-compliant employers to enrol their employees in an MPF scheme and/or to pay default contributions, as the case may be, and also streamline the process of recovering default contributions by removing the 30-day settlement period.

(c) Since the implementation of the MPFSO in December 2000, a total of 57 employers (including 51 limited companies, 3 sole proprietorship companies and 3 directors) have been prosecuted more than once. When filing prosecution, the Department of Justice would provide the court with previous sentencing records of repeated offenders for the court's reference in considering judgment. Furthermore, when hearing default cases, magistrates would require defaulting employers to pay the default contributions and surcharges first. If the defaulting employer concerned failed to comply, the magistrate would take into account this factor in deciding the level of fine.

As stated in part (b) of the reply above, the legislative amendments to increase the penalties on non-compliant employers came into force on December 1, 2008. Therefore, the penalty figures from 2005-06 to 2008-09 could not reflect the effect of these legislative amendments. In addition, the MPFA has set up a special task force to closely monitor employers who are repeated offenders. The MPFA would take immediate enforcement action against them in case of further non-compliance.